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UNCLAS SECTION 01 OF 03 BRASILIA 002162

SIPDIS

STATE FOR WHA/BSC, EB/TPP/MTA/IPC SWILSON, AND CA/VO
STATE PASS TO USTR FOR SCRININ, LYANG AND BPECK
USDOC FOR
4322/ITA/MAC/WH/OLAC/WBASTIAN/JANDERSEN/DMCDO UGALL/DRISCOLL
USDOC FOR 3134/USFCS/OIO/EOLSON/DDEVITO
TREASURY FOR OASIA/SEGAL
NCS FOR DEMPSEY

E.O. 12958: N/A

TAGS: [KIPR](#) [ETRD](#) [KCRM](#) [PGOV](#) [ECON](#) [BR](#) [IPR](#)

SUBJECT: BRAZIL: PIRACY CPI'S FIFTH IPR BILL

REFS: A) BRASILIA 2150 B) BRASILIA 2017 C) BRASILIA 1668

1. This is the final cable in a series of five on legislation put forward on July 16, 2004 by Deputies belonging to the Congressional Investigative Commission on Piracy (refrels). Below is Embassy's unofficial translation of the text of the fifth bill.

2. Bill 3968/2004
(of the Piracy CPI)

Regulates the installation of a System of Flow Measurement (SMV) in industrial beverage establishments and provides other provisions.

The National Congress decrees:

Art. 1 - This law determines the installation of equipment to measure flow and conductivity and equipment to control, register and mark the quantities measured in the industrial establishments of beverages, alcoholic beverages and vinegars classified in position 2202 and 2203 of the Table of Incidence of Tax on Industrialized Products (TIPI), according to regulation.

Art. 2 - The System of Flow Measurement (SMV) should be installed by industrial establishments covered under this law on each filler, understood as the equipment utilized to fill the barrels in which the beverage is conditioned for final sale to the consumer.

Sole paragraph. The system described in the caput should continuously measure the flow, electric conductivity and temperature of the liquids that feed each filler and flow through the tubing to which it is associated, without interfering with the regular process of beverage manufacture.

Art. 3 - This law applies to all industrial beverage establishments subject to the IPI tax regulations according to current legislation, except those whose installed annual production capacity is less than five million liters, computing capacities of respective branches, associated companies, partners, controlled and controllers.

Art. 4 - These industrial establishments have twelve months from the publication of this law to install said equipment and equipment for flow control.

Art. 5 - The States, Federal District and Municipalities can make an agreement with the Union to operate together with the Union in the establishment of criteria and installation procedures, inspection and control of the Flow System.

Art. 6 - This law goes into effect on the date of its publication.

JUSTIFICATION

During public meetings, one of the measures adopted by the Federal Government in 2001 to inhibit counterfeiting and tax evasion was mentioned, a project for installing flow measurement by manufacturers of beer and soft drinks, established by Federal Revenue, based on Provisional Measure no. 2.158-35 of August 24, 2001.

On May 3, 2004, through Of. No. 689/2004, the Presidency of CPI requested information about the status of the project in question.

In response to our request, SRF sent us a note with the following clarifications:

(...)

2. The requirement for the installation of Flow Measurers by manufacturers of beer and soft drinks was established by

art. 36da Provisional Measure no. 2.158-35 of August 24, 2001, regulated by SRF through Normative Instruction SRF no. 265, of December 20, 2002 that attributed to the General Coordination of Inspection (Cofis) the responsibility for establishing:

- a) conditions of operation, as well as technical characteristics and equipment safety;
- b) procedures for ratification and licensing of equipment and respective manufacturers of same;
- c) minimum limits of production or invoicing, starting at which the installation of equipment becomes mandatory;

13. SRF, with the purpose of initiating the process of implantation in the sector of beer manufacture, signed several technical cooperation agreements with the National Union of the Beer Industry (SINDICERV), as well as States of the Federation, such as Bahia, Pernambuco, Ceara, Para, Sao Paulo, Rio de Janeiro, Minas Gerais and Parana, for the specification and installation of flow meters; in addition to the objective previously mentioned, also promotes the interchange of information and interchange of mutual assistance in the supervision of tax compliance, which will permit significantly greater control of this segment of fiscal interest.

14. The General Coordination of Inspection, with reference to above-mentioned items "a" and "c", then edited the Executive Declarative Act Cofis no. 20, of October 1, 2003, undertaking the specification of requirements for the System of Flow Measure to be installed in the beer industry.

15. The System of Flow Measurement will be composed of flow measuring equipment, conduction meters as well as equipment for the control, recording, marking and remote transmission of the quantities measured to SRF. The System of Flow Measurement should continuously monitor production of fluids in the industrial establishments where it is installed, with the following functions:

- measurement of flow (that is volume by unit and time);
- measurement of electric conductivity and temperature of the liquids that feed each filler;
- record measurements obtained from the flow, conductivity and temperature and make this information available for use by the Secretary of Federal Revenue;
- remote communication with systems at the Secretary of Federal Revenue, for the transfer of recorded information.

16. The measurement of electrical conductivity and temperature will allow, under certain conditions, the differentiation between types of liquids that feed a filler. The flow measurements supplied by SMV will allow an estimate to be made of the volume of fluids produced, in a specific period of time, at an industrial establishment.

17. The System of Flow Measurement for the beer industry, is in a phase of validation of norms and procedures related to the installation, verification of conformity and registration of the system to be established by an Executive Declarative Act by Cofis. After publication of said act, the first equipment should be installed in a maximum of three months, and expectations are to install it on all beer production lines nationwide within six months, counted from the first equipment registered by SRF.

18. With reference to the soft drink industry, an agreement was signed on April 27, 2004 between SRF and the Brazilian Association of Soft Drink Industry (ABIR) for the implementation of a System of Flow Measurement for the sector. The expectation is that there will be a reduced time frame for this segment due to the similarity in equipment and their requirements (...). According to the information received from SRF, it is felt that the project of installation of flow meters, short and medium term, is the solution for the control of counterfeiting of drinks and consequent tax evasion.

It is also felt, however, that specific legislation currently in force, needs refinement with regard to definition of capacity and responsibilities for the improvement of control of the Flow Measurement System.

Therefore, CPI debated presenting the bill mandating installation of flow measurement equipment in industrial establishments of beverages classified under TIPI, except those whose annual installed production capacity is less than five million liters, when computing the capacity of respective branches, associated companies, partners, controlled and controllers.

The project also determined that Federal Revenue, INMETRO and ANVISA, within the scope of their power, define the flow parameters, electric conductivity, liquid temperature and interference caused by the flow system in the process of drink manufacture.

Since this is precision equipment that requires investment by the industries, it will be convenient to allow a period of 12 months from publication of the law so that industry and public entities have time to make adjustments necessary to install the Flow System.

In the end, the efficiency of the Flow System should be achieved with the joint efforts of the Union, States, DF and municipalities in the elaboration of procedures for installation, inspection and control of the Flow System, which is why the proposal anticipates an agreement between the Union and the rest of the entities.

We are convinced that this proposal will make possible not just the fight against counterfeiting and evasion, but will permit better conditions for Brazil's participation in the highly competitive and global market that is today's beverage market.

Sessions Room July 16, 2004

Deputy Medeiros, President
Deputy Josias Quintal, Reporter

End unofficial Embassy translation.

Danilovich